REMARKS

Claims 15-29 are pending in the present Application. Claims 15 has been amended, leaving Claims 15-29 for consideration.

Reconsideration and allowance of the claims are respectfully requested in view of the amendment and the following remarks.

Note

While the Office Action Summary page identifies this office action as non-final, Examiner's Conclusion states the action is made final. Applicant, however, was able to speak with the Examiner via telephone on March 22, 2010, and she confirmed the action is non-final. Applicant appreciates the Examiner's time and clarification.

Claim Rejections Under 35 U.S.C. § 112

Claims 15-29 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Claim 15 has been amended to clarify the language and distinctly claim the subject matter which Applicant regards as the invention. Specifically, Claim 15 was amended to clarify that the alcohol, wherein a carbon chain of the alcohol is C10-C14, is a separate alcohol chain in addition to the fatty acid ester.

The amendment to Claim 15 renders the rejection moot. As such, Applicant respectfully requests withdrawal of this rejection.

Claim Rejections Under 35 U.S.C. § 103(a)

Claims 15-22, 24 and 26-29 stand rejected under 35 U.S.C. § 103(a), as allegedly unpatentable over U.S. Patent No. 6,146,648 to Bret et al. ("*Bret*").

Bret is generally directed to a softening lotion composition for use in an absorbent paper product. The purpose is to provide a softening effect on products such as tissue paper. Bret utilizes, in part, C16+ fatty alcohols and C24+ waxy esters in the softening formulation.

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing that all elements of the invention are disclosed in the prior art; that the prior art relied upon, or knowledge generally available in the art at the time of the invention, must provide some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combined references. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988). "A patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art." *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007). To find obviousness, the Examiner must "identify a reason that would have prompted a person of ordinary skill in the art in the relevant field to combine the elements in the way the claimed new invention does." *Id.*

Applicant asserts that a *prima facie* case of obviousness has not been established because, at the very minimum, *Bret* fails to teach or suggest all elements of Applicant's independent Claim 15.

Independent Claim 15 is directed to a fibrous material that imparts a sense of freshness where the product contains, in part, at least one fatty acid ester with a C10-C14 carbon chain and an alcohol with a C10-C14 carbon chain.

With respect to independent Claim 15, Applicant contends that *Bret* fails to teach or suggest a fibrous material that imparts a sense of freshness where the product contains, in part, at least one fatty acid ester with a C10-C14 carbon chain and an alcohol with a C10-C14 carbon chain. In contrast, *Bret* describes a softening lotion composition for use in an absorbent paper product, which utilizes C16+ fatty alcohols and C24+ waxy esters; ranges that are well outside the C10-C14 carbon chain claimed by Applicant in independent Claim 15. Moreover, the goal of the Applicant's claimed product is to provide a sense of freshness, not a softening effect as described by *Bret*. The chemical differences between the two compositions account for the difference in characteristics, i.e., Applicant's freshness feeling versus the softening effect of the *Bret* composition.

However, page 9 of the Office Action dated March 17, 2010 says:

> Referring to the '648 patent, this patent states that the esters are derived from linear fatty acids having 6 to 24 carbon atoms (claim 4). At minimal the saturated fatty acids having 6 carbon atoms and a saturated linear fatty alcohol having 6 carbon atoms, would yield a fatty acid ester of C12.

The Office Action goes on to say on pages 10-11 that:

> With regards to the ester, the waxy esters taught in the '648 patent are derived from linear fatty acids with 6 to 24 carbon atoms and linear fatty alcohols with 6 to 24 carbon atoms (lines 34-48 column 8). Taking the minimal carbon chain lengths for the fatty acid and fatty alcohols this would yield a fatty acid ester of minimum 12 carbons. This fatty acid ester would yield the ester as presently claimed. Although in the preferred embodiments the fatty acid ester constitutes at least 24 carbon atoms, disclosed examples and preferred embodiments do not constitute a teaching away from a broader disclosure or nonpreferred embodiments. In re Susi, 440 F.2d 442, 169 USPQ 423 (CCPA 1971).

Continuing from that portion of the *Bret* patent quoted in pages 10-11 of the Office Action, it goes on to say the waxy esters are prepared from a long-chain fatty acid with a fatty alcohol of a shorter chain, or vice versa. (Col. 8, ll. 39-41). *Bret* further discloses that the chain lengths of the alcohol and the fatty acid can be identical provided that the ester has at least 24 carbon atoms. (Col 8, ll. 41-43). Therefore, by properly following the teachings of *Bret*, one would be lead away from forming a fibrous material that imparts a sense of freshness where the product contains, in part, at least one fatty acid ester with a C10-C14 carbon chain and an alcohol with a C10-C14 carbon chain. Furthermore, the patent specifically teaches away from forming a fatty acid ester as suggested in the Office Action (quoted above). Rather, *Bret* discloses that while linear fatty alcohols of 6 to 24 carbon atoms and linear fatty acids with 6 to 24 carbon atoms can be used to form the waxy esters, the combination must be such that the waxy esters have at least 24 carbon atoms. This is not merely a preferred embodiment, it is a requirement for practicing the teachings of *Bret*. In other words, a linear fatty alcohol with 6 carbon atoms could be combined with a linear fatty acid of at least 18 carbon atoms, or vice-versa, but in no

circumstances could a linear fatty alcohol with less than 12 carbon atoms be combined with a linear fatty acid of less than 12 carbon atoms.

In view of the foregoing, Applicant asserts that a *prima facie* case of obviousness has not been established because, at the very minimum, *Bret* fails to teach or suggest all elements of Applicant's independent Claim 15. Given that claims 16-22, 24, and 26-29 depend from and included all the limitations of Claim 15, Applicant respectfully requests withdrawal of these rejections.

Claims 23-26 stand rejected under 35 U.S.C. § 103(a) over *Bret* in view of U.S. Patent No. 6,270,878 to Wegele ("*Wegele*"). Claim 25 stands rejected under 35 U.S.C. § 103(a) over *Bret* in view of U.S. Patent No. 3,965,518 to Muoio ("*Muoio*").

Wegele directed to wipes and *Muoio* directed to impregnated wipes do not make up for the deficiencies of *Bret* as described above. Given that claims 23-26 depend from and included all the limitations of independent Claim 15, Applicant respectfully requests withdrawal of these rejections.

It is believed that the foregoing amendments and remarks fully comply with the Office Action and that the claims herein should now be allowable to Applicant. Accordingly, reconsideration and allowance are requested.

If there are any additional charges with respect to this Amendment or otherwise, please charge them to Deposit Account No. 06-1130.

Respectfully submitted,

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